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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
	:
SEARS HOLDINGS CORPORATION, et al.,	: Case No. 18-23538 (RDD)
	:
	: (Jointly Administered)
Debtors.¹	:
-----X	: Related to Dkt. No. 3298

**LIMITED OBJECTION OF LANDLORD TO TRANSFORM HOLDCO LLC'S
NOTICE OF ASSUMPTION AND ASSIGNMENT OF
ADDITIONAL DESIGNATABLE LEASES**

Kimco Realty Corporation and certain of its affiliates (collectively, "Kimco" or the "Kimco Landlords"), by its attorneys, Morgan, Lewis & Bockius, LLP, in response to the *Notice*

¹The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

of Assumption and Assignment of Additional Designatable Leases filed by Transform Holdco LLC (the “Notice”) [Dkt. No. 3298], respectfully state as follows:

1. Kimco is landlord to the Debtors pursuant to certain leases for non-residential real property (the “Kimco Leases”).²

2. On January 25, 2019, Kimco previously objected to proposed cure amounts in its *Objection and Joinder of Landlord to the Debtor’s Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases* (the “Prior Objection”) [Dkt. No. 1839].

3. On April 19, 2019, the Buyer filed the Notice.

4. Pursuant to paragraphs 16 and 17 of the Notice, Kimco may file supplemental and revised objections based on new information. Kimco files this Objection to the proposed cure amounts based on (1) new revised cure amounts proposed by the Buyer; and (2) new information available to Kimco since the prior cure objection deadline.

5. Attached hereto as Exhibit A is a summary of Kimco’s objections to the proposed cure amounts as well as amounts that have been agreed upon between Tammi Banaszak, Director of Real Estate for Sears and Kimco on May 3, 2019³:

6. Section 365 of the Bankruptcy Code governs the assumption and assignment of executory contracts and unexpired leases. In general, in order to assume an unexpired lease, a debtor in possession must cure the arrearages and provide adequate assurance of future performance under such lease. *See* 11 U.S.C. § 365(b)(1). Section 365 mandates that any purported assumption or assignment of leases is “subject to the Court’s approval.” 11 U.S.C. §§ 365(a), (f)(2). “The Bankruptcy Code imposes heightened restrictions on the assumption and

² The Kimco Leases are voluminous, and therefore, have not been attached to this Objection. Kimco will provide copies of the Kimco Leases to this Court and parties in interest upon request.

³ Supporting documentation is attached hereto as Exhibit B. Additional supporting documentation may be available upon request.

assignment of leases for shopping centers.” *In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086 (3rd Cir. 1990) (citing 11 U.S.C. 365(b)(3)). “The right to assume an unexpired lease under which there is an existing default is further limited by section 365(b)(3) if the lease is one of real property in a shopping center.” 3 Collier on Bankruptcy P 365.06 (16th 2019). Shopping center landlords like Kimco are afforded special statutory protections in the form of adequate assurance. *Id.* As set forth above, the Buyer has failed to sufficiently cure the arrearages for the subject Kimco Leases. Consequently, the Notice must be denied as it relates to the cure amounts with respect to the subject leases.

7. To the extent not inconsistent with the arguments made herein, Kimco hereby joins in all other objections raised by any other landlords to the Notice and incorporates all of the arguments raised by the other objecting landlords as if set forth in detail herein.

8. Kimco reserves the right to supplement this Objection and make such other and further objections as may be necessary or appropriate.

WHEREFORE, Kimco respectfully requests that this Court enter an order (i) denying without prejudice the proposed cure amounts set forth in the Notice, and (ii) granting such further and other relief as this Court may deem just and proper.

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Dated: New York, New York
May 3, 2019

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EXHIBIT A

DISPUTED AMOUNTS

<u>STORE NUMBER</u>	<u>DEBTORS' NEW OR REVISED PROPOSED CURE AMOUNT</u>	<u>LANDLORD'S PREVIOUSLY ASSERTED CURE AMOUNT</u>	<u>SUPPLEMENTAL OR REVISED CURE AMOUNT</u>
1149	\$ 5,306.00	\$136,369.88	\$641,755.40
3133	\$0.00	n/a	\$5,425.56
3818	\$0.00	\$19,265.86	\$43,004.30
9614	\$64,040.00	\$103,033.37**	\$135,239.66

**Kimco and Tammi Banaszak, Director of Real Estate for Sears agreed to a cure amount of \$105,507.00 on May 3, 2019, however Kimco disputes a balance of \$29,731.87.

AGREED TO AMOUNTS

<u>STORE NUMBER</u>	<u>DEBTORS' NEW OR REVISED PROPOSED CURE AMOUNT</u>	<u>LANDLORD'S PREVIOUSLY ASSERTED CURE AMOUNT</u>	<u>AGREED TO CURE AMOUNTS</u>
3828	\$3,120.58	n/a	\$4,900.10
4494	\$109,548.19	n/a	\$121,085.44
7665	\$70,297.00	n/a	\$94,097.73
9224	\$0.00	\$27,790.75	\$21,811.35
9423	\$0.00	n/a	\$12,968.77

EXHIBIT B

Supporting Documentation

4/22/19 KIM2

Kimco 9.1 Production Database

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15:34:00 QPADEV003L

Lease Summary

KIM2 V980924 SUSANCTI

Store 1149

Tenant TSEARH000 Sears Holdings Corporation
Project SCAW1768/ WHITTWOOD TOWN CENTER
Lease LSEAR//00 Sears

Scan
From 0/00/00 To 4/22/19

Deposits All Zero

Date	Document	Description	Amount	Outstanding
11/02/18	G 0521350 002	Prior LL TAX	133029.75	119985.62
11/02/18	G 0521350 003	Current LL CAM	16388.18	16388.18
2/25/19	R 4064560 002	CAM Reconciliation	229434.40	229434.40
3/27/19	R 4085291 002	Real Estate Tax Reconciliation	275947.76	275947.76
4/05/19	C 2560126 001	185131 LB	24414.12-	.56-

Prior	.00	Net	641755.40	End	641755.40
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End of report

4/22/19 KIM2
15:34:45 QPADEV003L

Store 3133

Kimco 9.1 Production Database
Lease Summary

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KIM2 V980924 SUSANCTI

Tenant TSEARH000 Sears Holdings Corporation
Project SWAB1497A SUNSET SQUARE
Lease LKMAR//00 Kmart

Scan
From 0/00/00 To 4/22/19

Deposits All Zero

Date	Document	Description	Amount	Outstanding
3/13/18	R 3840855 002	Tenant Exp - Wat/Sew TrueUp	655.15-	655.15-
3/13/18	R 3840856 002	CAM Reconciliation	3269.24	3269.24
3/11/19	R 4067039 002	CAM Reconciliation	3269.24	3269.24
3/11/19	R 4067040 002	Tenant Exp - Wat/Sew TrueUp	457.77-	457.77-
Prior	.00	Net	5425.56	End 5425.56

End of report

4/22/19 KIM2
15:29:50 QPADEV003L

store 3819

Kimco 9.1 Production Database
Lease Summary

ARLAD04I AR4151-A Page 1
KIM2 V980924 SUSANCTI

Tenant TSEARHO00 Sears Holdings Corporation From 0/00/00 To 4/22/19 Scan Deposits All Zero
Project SFLH1150F OAKWOOD PLAZA NORTH
Lease LKMAR//00 Kmart

Date	Document	Description	Amount	Outstanding
3/14/17	R 3597363 002	CAM Reconciliation	12983.18	6992.24
3/14/17	R 3597363 004	Electric Reconciliation	8222.29	8222.29
2/21/18	R 3828448 002	CAM Reconciliation	5452.89	5452.89
2/21/18	R 3828448 004	Electric Reconciliation	8291.48	8291.48
12/20/18	R 4018893 002	Real Estate Tax Reconciliation	306.96	306.96
2/20/19	R 4056937 002	CAM Reconciliation	5192.22	5192.22
2/20/19	R 4056937 004	Electric Reconciliation	7887.51	7887.51
2/21/19	G 0525098 001	1/19/19:IRRIG. REPAIRS KMART	658.71	658.71
Prior	.00	Net	43004.30	End 43004.30

End of report

4/22/19 KIM2
15:30:13 QPADEV003L

Store 9614

Kimco 9.1 Production Database
Lease Summary

ARLAD04I AR4151-A Page 1
KIM2 V980924 SUSANCTI

Tenant TSEARH000 Sears Holdings Corporation From 0/00/00 To 4/22/19 Scan Deposits All Zero
Project SFLK0022/ TRADEWINDS SHOPPING CENTER
Lease LKMAR//00 Kmart

Date	Document	Description	Amount	Outstanding
12/10/15	R 3278970 002	Real Estate Tax Reconciliation	64494.19	1476.48
11/28/16	R 3531703 002	Real Estate Tax Reconciliation	63405.91	3259.97
2/16/17	R 3575092 002	CAM Reconciliation	20537.04	4024.97
7/29/17	G 0501997 001	Roof Leak Near Kmart 6/20	738.00	738.00
11/29/17	R 3777413 002	Real Estate Tax Reconciliation	77940.57	9642.87
11/13/18	R 3991584 002	Real Estate Tax Reconciliation	75863.37	61172.59
1/03/19	R 4026931 001	11/17-10/18 Percentage Rent	8512.34	8512.34
2/21/19	R 4057253 002	CAM Reconciliation	46412.44	46412.44
Prior	.00	Net	135239.66	End 135239.66

End of report